

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA LABOR RELATIONS BOARD

IN THE MATTER OF THE FACT FINDING BETWEEN

Colonial Intermediate Unit 20 :  
and :  
Transport Workers Union of : CASE # ACT 88-13-45-E  
America Local 282 :

**FACT FINDING REPORT AND RECOMMENDATION**

APPOINTMENT: September 17, 2013  
REPORT DATE: October 28, 2013  
FACT FINDER: Timothy J Brown, Esquire  
FOR THE DISTRICT: Paul Blunt, Esquire  
King Spry, LLC  
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Bethlehem, PA 18018  
FOR TWU LOCAL 282: Joshua Rubinsky, Esquire  
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**Introduction**

On September 17, 2013, the Pennsylvania Labor Relations Board (PLRB), pursuant to Act 88 of 1992 (Act 88) and the Public Employer Relations Act (PERA), appointed the undersigned as Fact Finder in the impasse between the Colonial Intermediate Unit 20 (the IU) and Transport Workers Union of America, Local 282 (the Union).

**Bargaining and Fact Finding History**

Following a representation election conducted in or about October 2011, the Union was certified as exclusive collective-bargaining representative of a unit of all the IU's full-time and regular part-time blue-collar nonprofessional employees including but not limited to bus drivers, van drivers, mechanics, monitors, food service coordinators, couriers, custodial employees and maintenance employees, and excluding management level employees, supervisors, first-level supervisors, confidential employees and guards as defined in PERA. The bargaining unit consists of approximately 90 employees. Following certification of the Union the parties met for purposes of negotiating an initial agreement on approximately twenty occasions. A mediator has been present during approximately half of the bargaining sessions between the parties. The parties have reached tentative agreements on a number of issues and were unable to reach agreement on the several remaining outstanding issues. The Union thereafter initiated the instant Fact Finding.

Following notice of his appointment the Fact Finder and representatives of the parties communicated with one another on numerous occasions in efforts to narrow the issues and resolve hearing-related matters, including September 27 and October 22, 2013 prehearing telephonic conferences. On October 23, 2013 a formal fact finding hearing was held before the undersigned in Easton, Pennsylvania, at which time the

parties were given the opportunity to present the Fact Finder testimony, documentary evidence and oral argument relating to their outstanding issues.

This Report contains "recommendations" for resolution of all outstanding issues and constitutes the settlement proposal upon which the parties are now required to act, as directed by statute and PLRB regulations. Pursuant to statutory authority, this Report will be released to the public if not accepted. A vote to accept the Report does not constitute agreement with, or endorsement of, the rationales contained herein, but rather, represents only an agreement to resolve the issues by adopting the recommendations contained herein.

***The parties are directed to review the Report and within ten days of its issuance, notify the PLRB of their decision to accept or reject the recommendations.***

### **Introduction and Issues**

Based upon representations made by the parties to the Fact Finder, the following issues have been identified by one or both parties as unresolved:

1. Bidding/Seniority/Posting
2. Health Care/ Salary – the me to language
3. Benefits/Holidays for Transportation Department Employees
4. PTO Days for Transportation Employees
5. Grievance Procedure/Discipline Language-Adopting Para professional unit's language
6. Dues Deduction / Fair Share / Cope
7. Statutory Savings Clause/General Provisions
8. Term of Agreement
9. No Strike-No Lock-out Provision
10. Hours of Work
11. Holidays
12. Work Schedules for Fulltime, Salaries 12-month Employee Work Schedules
13. Salary Inequities Committee
14. Probationary Period
15. Employee Benefits
  - a. Personal Leave-vacation
  - b. Maternity/Childrearing Leave
  - c. Court Appearances and Hearings
  - d. Personal Leave / Vacation
  - e. Sick Leave
  - f. Sick Leave Rebate at Retirement
  - g. Leave of Absence- FMLA/illness
  - h. Bereavement Leave
  - i. Bereavement Leave-Close Relative
  - j. Unpaid Leaves
  - k. Union Activity During Work Hours
  - l. Jury-Duty
  - m. Group Term Life Insurance
  - n. Medical Examinations
  - o. Insurance Coverage / Retirees
16. Errors in Pay
17. Employee Expenses
18. Overtime
19. Maintenance and Safety of Buses
20. Safety Equipment(Winter safety equipment)
21. Work by Supervisory Employee
22. Uniforms/Clothing Allowance
23. Personnel File
24. Safety Committee/Bonus
25. Use of Bulletin Board

26. Job Descriptions
27. Employee Legal Protection
28. Operational Control
29. Leave
30. Non-Healthcare Benefits
31. Recognition
32. Management Rights
33. Salary / Wages

Due to the large number of outstanding issues I have presented narrative discussions on only the more significant categories of issues or individual issues presented. However, notwithstanding any absence of narrative in this report on any individual outstanding issue, I have given each and every outstanding issue thorough consideration, including full contemplation of the arguments and careful study of the extensive submissions on the issue submitted by the parties. That said, I respectfully offer the following recommendations:

***Issues: Bidding /Seniority Posting, Health Care and Management Rights***

**Background**

The IU referenced a number of what it considers to be interrelated issues for purposes of its bargaining proposal as issues of "operational control." In this regard, the IU has linked its offers relating to health care insurance to its offers relating to bus route assignment/modification and bidding and assignment-related Managerial rights. The IU's package offer in such regard is as follows:

***IU's Offer***

Drivers and monitors shall receive the same medical benefits with, among other things, the same deductibles, co-pays and employee premium contribution as those provided to Colonial Intermediate Unit 20 Support Personnel Association (Support Association) members subject to the following terms and conditions:

1. Only a PPO (Preferred Provider Organization) Plan shall be offered to hourly employees drivers and monitors. The Preferred Provider Organization option benefit summary is outlined on APPENDIX C.
2. The Transportation Workers Union (TWU) shall provide the Intermediate Unit a seniority list of its drivers/monitors by June 15. The EMPLOYER shall have until July 15 of each year to advise the UNION of any corrections that are needed to the Seniority list.
3. By August 15 the Intermediate Unit shall create daily bus routes and provide TWU a list of said routes with the amount of time the Intermediate Unit expects it to take a driver to complete the route. The Intermediate Unit shall also provide the number of work hours the Intermediate Unit expects a driver to accumulate over the course of a contract year by driving each route it creates, which shall be termed "expected yearly hours."
4. From the list of bus routes provided by the Intermediate Unit, the drivers shall be permitted to select from the available routes in order of their seniority.
5. To be eligible for family coverage, a bus driver/monitor must select a bus route with expected yearly hours of at least 1080.
6. To be eligible for single coverage, a bus driver/monitor must select a bus route with expected yearly hours of at least 900.
7. Once eligible for a given level of coverage, a driver/monitor shall continue to be eligible for that level of coverage for the entire contract year even if the expected yearly hours fall below the threshold for that coverage provided that (a) the change in the route was not caused by the driver, (b) the driver

makes himself/herself available for work, and (c) the driver does not refuse assigned work except on account of illness or emergency.

8. Drivers/monitors who fail to make themselves available or refuse assigned work except on account of illness or emergency shall forfeit their right to guaranteed coverage for the contract year and shall fall to last on the list of seniority--to the same position on the seniority list as would be occupied by a new hire. Employees who fail to make themselves available or refuse assigned work except on account of illness or emergency shall also be subject to discipline including termination.

The employee premium contribution for each level of coverage shall be the same as that paid by members of the Support Association.

It is understood by the Parties that the Intermediate Unit, in exchange for guaranteeing healthcare coverage to employees as described, shall have the exclusive right and authority to direct employees and assign work to said employees as circumstances dictate. Said right shall include but not be limited to the right to reassign bus drivers and monitors to different bus routes as efficiency and/or the interest of the students dictate.

The same prescription drug benefit as that provided to the Employee Support Personnel Association (ESPA), with the same co-pays and deductibles, will be provided for fulltime, salaried, 12-month employees and hourly employees who are eligible for medical benefits under the terms and conditions described above.

The same dental care benefit as that provided to the Employee Support Personnel Association (ESPA), with the same co-pays and deductibles, will be provided for fulltime, salaried, 12-month employees and hourly employees who are eligible for medical benefits under the terms and conditions described above.

### ***The Union***

The Union has made a number of proposals relating to the IU's linked healthcare/route assignment package and Management Rights. On related issues of Bus Route Assignments/Bids and Medical insurance, the Union has presented the following offers;

#### *Transportation Department Picks and Bumps*

Employees in the Transportation Department shall have the right to pick their primary work assignments (hereafter "runs") as scheduled by the IU in accordance with their transportation and classification seniority. The parties recognize that the IU's clients regularly require that adjustments be made to route assignment. The classifications are listed in Article XIII. The run schedules prepared by the IU for the August picks shall list the primary work assignment, reporting location, starting times, finishing times, and scheduled days of the week on which assigned work is to be performed as well as any required license. Such picking will be scheduled and run by the Union once per year in August. Successful bid shall become effective the first scheduled work day of the school year.

The IU shall provide an updated seniority list by department and classification to the union by June 15 of each year. The union shall have until July 15 of each year to advise the IU of any corrections that are needed to the seniority list. Any and all disputes regarding seniority dates for the purpose of this Section "B" shall be resolved by the union.

The Union and the IU will meet in October of each year to review the bidding process.

#### *The August Pick*

Runs shall be physically posted at the IU and listed on the IU Web site for employees viewing seven (7) calendar days before the annual August pick. The IU may adjust the length of time of the runs as business conditions demand. The IU shall try to reconfigure runs so as not to decrease the length of time of the runs. The IU agrees that the percent of full-time positions (i.e. versus part-time drivers and monitors) shall not be decreased.

Work assignments arising after the August bid, such as new work or work created by vacancies or other reasons.

Work assignments arising after the August Bid, such as new work or work created by vacancies or other reasons after the August Bid shall be posted for bid within seven (7) calendar days of being opened and physically posted and listed on the IU's web site for five (5) work days and awarded within seven (7) calendar days to the most senior employee who signs the bid. The work assignment that the successful bidder came from will be assigned by the IU as necessary to suit the needs of the business.

1. If IU opening becomes available after the yearly bids, the IU at its discretion shall fill those assignment for up to thirty (30) days as necessary to suit the business needs of the IU;
2. The IU shall post these positions for seven (7) calendar days;
3. Eligible bargaining unit members shall submit their bids no later than the end of the posting period .
4. The Union shall review the bids with the IU;
5. The position shall then be awarded to the qualified senior bidder no later than seven (7) calendar days after the close of the bidding;
6. The successful bidders former position will not be subject to rebidding and shall be filled as necessary to suit the business needs of the IU.
7. If the IU has advance notice of an opening i.e. retirement, the thirty days will run from the date the IU has such notice.

#### *Trips and charters*

Trips and charters will be equitably distributed consistent with the needs of the business.

#### *Medical benefits*

Drivers and monitors shall receive the same medical benefits as those provided to Colonial Intermediate Unit 20 Support Personnel Association (Support Association) or the Teachers Union, whichever the Union selects for its members subject to the following terms and conditions. The employee premium contribution formula for each level of coverage shall be the same as that paid by members of the Support Association or the Teachers Union whichever the union selects. It is expected that only a PPO (Preferred Provider Organization) Plan shall be available to drivers and monitors.

Additionally, the union takes the position that its members should continue to receive medical benefits under the current traditional indemnity plan under the same conditions they currently receive such benefit until the IU and the Support Association or the Teachers Union, as the case may be, agree to a PPO and the Union exercises its right of selection.

#### ***Rationale of the parties***

##### *The IU*

Essentially, the IU proposed that in exchange for the Union withdrawing its numerous proposed limitations on the ability of the IU to manage the operations of the transportation service, the IU is willing to (i) provide healthcare at what it asserts are extremely low hourly thresholds (single coverage for 900 hours worked and family coverage for 1080 hours worked), (ii) allow drivers and monitors a one time per year selection of routes and runs based on a seniority list provided by Union, and (iii) guarantee healthcare

coverage for those who pick routes above the thresholds for the entire year even if those routes fall below the threshold because of changes made by the Districts and/or the IU. Such operational flexibility is essential according to the IU because of the character of the IU's clients and the services the IU is mandated to provide. In such regard, the IU explained, because of the needs of the Special Education Students for whom the IU is mandated to provide transportation, the IU must have operational control and flexibility in the following areas:

1. **Special Bus Equipment:** The physical and in some cases emotional needs of some the students frequently require special bus equipment and/or specially designed buses to address those needs (e.g., wheelchair capacity). As not all of the buses are specially designed or have the required special equipment, the matching of the students with the buses clearly impacts the construction and design of the bus routes and runs.
2. **Limitations on travel time:** Many of the students have emotional, mental and physical conditions that limit the amount of time these students may spend on a bus. This obviously impacts the design of the bus routes and runs.
3. **Additional Personnel:** The physical, emotional and mental needs of students often require that personnel in addition to the bus drivers accompany the students.
4. **Ongoing Modifications of IEP's:** The IDEA requires that the needs of the students and the accommodation of those needs be constantly monitored and modified as needed. What this means is that 1-3 are all subject to change at any time and often do change over the course of a school year.

Additionally, the IU explained, the needs of the students and the required accommodations are defined and determined by the IEP's of the individual students. The IU has absolutely no control over those IEP's as they are the outcome of agreements between the parents of the students and the sending Districts. As the IDEA places almost all of the control over these IEP's in the hands of the parents, even the sending districts have very limited control over these IEP's.

Operational control is also essential, the IU asserted, for it to meet the needs of its Sending District's. In this regard, the IU observed the following considerations:

1. **Financial:** For obvious reasons, the sending districts are looking to satisfy the needs of the students and their IEP's in the most cost effective way. What that means for the IU is that Districts send students to the IU for transport or take them back depending on whether the District believes it can do it more cost-effectively or not. Generally, in tough economic times, Districts are more likely to try to transport them if they can. Indeed, Districts have on a number of occasions taken back all of their special education students. When such take backs occur, significant adjustments must be made to runs and routes. When wholesale take backs occur, those adjustments will likely include the elimination of runs and routes requiring the elimination of positions. The likelihood of such take backs occurring obviously increases as the cost per students increases
2. **Geography:** The territory serviced by the IU is approximately 1300 square miles. As a consequence, there is no single bus depot, but multiple depots strategically located throughout the service territory. This puts severe restrictions on the IU's ability to move drivers and monitors from one route, run or special run to another.

The IU argued that the Union has proposed a variety of limitations on the ability of the IU to manage the operations of the transportation service, to which the IU responded:

1. As for the Union's proposal that the IU shall try to reconfigure runs so as not to decrease the length of time of the runs, and that the percent of full time positions (i.e. vs. Part-time Drivers and Monitors) shall not be decreased, it is not clear what a full-time bus driver/monitor is or what this means, the IU argued, if it is 37.5 hours as it is for 12-month, salaried positions, then there will be likely be few if any. If it means 1080 or 900 hours, then

the Agreement should say so and not use the term full-time. In any case, the proposal is both unworkable and unnecessary. The Union's proposal is unworkable as generally speaking, the factors that determine the length of time of the runs (IEP's, whether district's use the IU, and geography) and accordingly whether positions are full-time or part-time are not under the control of the IU for the reasons discussed above. The Union's proposal to require that it reconfigure runs is unnecessary: The IU already has the strongest of financial incentives for making sure the runs are as long as possible (because fewer people would be needed) and that those who under the IU's proposal are receiving healthcare receive as many hours as possible.

As for any Union proposal to bid on runs that may become open during the school year, the IU responded that any bid process that results in serial bumping, would be intolerable and unworkable especially when such fragile children with IEP's are involved. In this regard, the transportation of the students requires that the driver/monitor be familiar with the needs of the individual needs of those children and the bus route. It also requires that bus driver be capable of addressing those needs. That means that both the successful bidder and her replacement for old position will need to be trained on their new routes and the needs of the children right during the school year. In addition, many of these children particularly those who are autistic or emotionally challenged, do not adjust well to change. In addition, the parents of the children are often justifiably sensitive to any such change and have the power to block it.

In regard to the Union's proposals that (1) Trips and Charters will be equitably distributed consistent with the needs of the business, and (2) that all overtime work will be assigned within the various classifications as to equalize same as much as possible, and that on July 1 of every year the overtime list starts at zero, the IU maintained, these proposals are practically and financially unworkable. From a practical point of view, a number of factors over which the IU has little or no control determine who gets such work. Among these factors:

- (a) Geographical proximity of driver/monitor
- (b) Whether the driver has the right kind of bus with the right kind of equipment for transporting the students in question
- (c) Availability of driver: Does the driver have the time consistent his/her primary runs?

In regard to the Union's proposal that in the event that Employer passes over any employee in error when scheduling original work assignments or overtime work, the Employee will be paid for time missed, the IU responded that as the Union will be constructing the bidding lists for the drivers' primary assignments and running the August bid, any mistakes will be the Union's responsibility. As for overtime, the IU cannot guarantee how overtime will be distributed for the reasons already discussed and will not agree to any such guarantee. It will not therefore pay employees who it "passed over" (whatever that means).

The Union's proposed expansion of language excusing Drivers and Monitors from loss of medical benefits and seniority for failing to make themselves available or refuse assigned work from "illness or emergency" to include **family responsibility, approved second Job, school or emergency shall not be eligible for bidding jobs that become open later in year**, the IU argued, is wholly unreasonable and eliminates the commitment the IU requested in exchange for the IU's significant concession on healthcare. In exchange for providing family and single coverage and guaranteeing it for a year even if the hours of an employee falls below the threshold for that coverage, all that the IU asked in return is that the employee not be the cause of his/her falling below that threshold and that the employee make him/herself available to take additional work if they fall below the threshold. The Union proposal that the employees continue to get healthcare even if they fall below the threshold and refuse to make themselves available for additional work is simply unreasonable, the IU asserted.

In regard to the Union's proposal that the IU "shall have the exclusive right and authority to direct employees and assign work to said employees as circumstances **dictate so long as they do not violate the terms of this CBA**", the IU responded that it would not object to the language underlined if the Union were not insisting on impossibly burdensome restrictions on the operation of the transportation service.

Finally, in regard to Union proposals relating to operational control, the Union's proposal that the IU and the Union will work together in developing job descriptions for each position covered by this Collective Bargaining Agreement, the IU argued, job descriptions, except insofar as they impact the terms and conditions of employment, are not mandatory subjects of bargaining, but concern matters of inherent managerial prerogative and, accordingly, the IU need not negotiate matters that it has no obligation to negotiate.

### *The Union*

The Union has, and continues to, recognize the needs of the IU to be able to adjust its bus runs to meet the needs of its students and sending districts, and its proposals, the Union asserts, reflect such needs while also recognizing extremely important considerations of employee seniority and legitimate interests in job selection and work hours. Such considerations have direct impact upon the wages earned by bargaining unit members and are of vital interest and importance to the employees who perform the important work of the IU. The Union's willingness to accept the IU's offer relating to medical insurance eligibility and August bus route bid/ assignment reflects the Union's understanding of the unique challenges of the IU and the IU's operational needs and, importantly, the impact of medical insurance costs on the District. In regard to the later, Union acceptance of the IU's proposal relating to eligibility for medical insurance results in a number of bargaining unit members not being eligible for insurance. Under such circumstances, the Union is unwilling to accept a system, such as the one the IU proposes, that would allow the IU to take an employee "off of the street," assign that new employee a route that becomes open during the school year, and effectively allowing such a new employee to "jump over" other bargaining unit members and become eligible for medical insurance coverage. Such a result is fundamentally unfair and fails to recognize and respect the value that experienced employees bring to the organization.

The Union maintained that in further regard to its proposal for bidding on open routes during the school year, it has significantly limited the potential for disruption referenced by the IU by (1) allowing the IU to fill the position as it deems appropriate for thirty days, (2) limiting the bidding to only the open position and (3) allowing the IU to fill the position vacated by the successful bidder. According to the Union, it has offered a system that would produce only negligible disruption.

The Union asserted that it cannot agree to the IU's proposals relating to Drivers/Monitors failing to make themselves available. That proposed language provides:

Drivers/monitors who fail to make themselves available or refuse assigned work except on account of illness or emergency shall forfeit their right to guaranteed coverage for the contract year and shall fall to last on the list of seniority--to the same position on the seniority list as would be occupied by a new hire. Employees who fail to make themselves available or refuse assigned work except on account of illness or emergency shall also be subject to discipline including termination.

The Union objects to such language because; (1) it does not know what is meant by "fail to make themselves available," (2) the penalty for an employee who fails to make himself or herself available - removal of medical insurance coverage - is in the nature of discipline and should be dealt with within such context and not in work rules, and (3) to strip an employee of not only his or her medical insurance coverage but seniority as well is draconian. Also, the Union maintained, language that results in a Driver/monitor losing insurance coverage where a change in the employee's route results in a reduction of yearly hours on the route to a level below the 1080 or 900 hour threshold and the change is "caused by the driver," is vague and unfair and leaves too much to subjective judgment.

## **Recommendations**

### *Medical Insurance*

The IU claims it is likely that it will negotiate the same PPO plan for the Support Employee unit as for the Teacher Unit. I am sensitive to the fact that the Union here has not insisted upon setting its own or a

higher benchmark for insurance coverage than the other two bargaining units and that the IU does not want a pattern set by this, the smallest of its three, bargaining units. I am also persuaded that the character and interests of this unit are more like those of the Support Employees unit than the Teacher unit. Consequently, I recommend that (1) in exchange for allowing bargaining unit employees here to continued on their current traditional indemnity insurance plan until the IU has reached agreement on, and implemented, PPO medical insurance in the ESPA unit, (2) that the employee premium contribution for each level of coverage during the term of the Agreement shall be the same as that paid by members of the Support Association, (3) that the prescription drug benefit and dental care benefits plan established for the Support Association – including co-pays and deductibles - be applied to this bargaining unit., and (4) that if the IU agrees upon a PPO plans for the Support Association unit such plan will be offered to this bargaining unit and the IU may thereupon discontinue offering an indemnity plan to this unit.

I also recommend that insurance eligibility be based upon runs selected by employees based upon seniority in August of each year, and that additional, but not fewer, runs eligible for insurance coverage under the same conditions as the August Picks may be established by the IU in October of each year following discussions with the Union.

As for language relating to the impact of a reduction in yearly route hours, I agree with the Union that language proposed by the IU removing health insurance eligibility because of a reduction in the yearly hours of a bus run is “caused by the driver,” is not only vague but would also be woefully unfair to any affected Monitors.

Finally, I am persuaded by the IU’s arguments relating to its need to continually adjust routes to accommodate the needs of students and sending districts, and the impact of the financial incentive to use employees who are receiving medical insurance coverage. Such exercise of managerial discretion, of course, remains subject to the non-discrimination language already agreed upon by the parties.

Based upon such considerations, the following Language relating to establishing runs and insurance eligibility is recommended:

*August / October Bids*

1. The Transportation Workers Union (TWU) shall provide the Intermediate Unit a seniority list of its drivers/monitors by June 15. The EMPLOYER shall have until July 15 of each year to advise the UNION of any corrections that are needed to the Seniority list.
2. By August 15 the Intermediate Unit shall create daily bus routes and provide TWU a list of said routes with the amount of time the Intermediate Unit expects it to take a driver to complete the route. The Intermediate Unit shall also provide the number of work hours the Intermediate Unit expects a driver to accumulate over the course of a contract year by driving each route it creates, which shall be termed “expected yearly hours.”
3. From the list of bus routes provided by the Intermediate Unit, the drivers and Monitors shall be permitted to select from the available routes in order of their seniority.
4. To be eligible for family coverage, a bus driver/monitor must select a bus route with expected yearly hours of at least 1080 hours. Such an employee shall be considered Class F employees.
6. To be eligible for single coverage, a bus driver/monitor must select a bus route with expected yearly hours of at least 900 hours. Such an employee shall be considered Class S employees.
7. A Driver/monitor who selects a route with expected yearly hours of less than 900 hours shall not be eligible for insurance coverage and shall be considered a Class N employee.
8. Once eligible for a given level of family or single coverage, a driver/monitor shall continue to be eligible for that level of coverage for the entire contract year even if the expected yearly hours fall below the threshold for that coverage provided that (a) the driver makes

himself/herself available for work, and (b) the driver does not refuse assigned work except on account of illness or emergency.

9. Drivers/monitors who fail to make themselves available or refuse assigned work except on account of illness or emergency shall forfeit their right to guaranteed coverage for the contract year and shall fall to last on the list of seniority for purposes of route bidding for the current school year. Any such employee shall have his or her seniority restored for purpose of August bidding on the subsequent school year's routes.
10. Prior to October 15 of each year, the IU may, at its discretion and after consultation with the Union, add new runs to those established in August eligible for medical insurance coverage, but may not reduce the number of such runs.
11. Work assignments arising after the August bid, such as those established pursuant to paragraph 10, or resulting from new work or work created by vacancies or other reasons shall be subject to the following process:
  - a. At its discretion, the IU may fill such assignments for up to thirty (30) calendar days as necessary to suit the business needs of the IU;
  - b. Such work assignments shall be posted for bid within five (5) work days of being opened.
  - c. The IU shall post these positions for and physically posted and listed on the IU's web site for five (5) work days;
  - d. Only bargaining unit members who are of a lesser class of insurance eligibility than that associated with such open positions are eligible to bid on such openings. (For example, if the opening is for a Class F assignment only Class S and Class N employees are eligible to bid, or, if the opening is for a Class S assignment only Class N employees are eligible to bid);
  - e. Eligible bargaining unit members must submit their bids no later than the end of the posting period;
  - f. The Union shall provide the IU a list of the top three bidders for each such position;
  - g. The position shall then be awarded to the qualified senior bidder no later than five (5) work days after the close of the bidding;
  - h. The successful bidder's former position will not be subject to rebidding and shall be filled as necessary to suit the business needs of the IU;
  - i. If the IU has advance notice of an opening i.e. retirement, the thirty days referenced in subparagraph a will run from the date the IU has such notice.

#### *Trips and charters*

In assigning trips and charters the IU will exercise good faith to equitably distributed such work to unit employees consistent with the needs of the business as determined by the IU.

#### *Managerial Rights Relating to Assignments*

It is understood that the IU shall have the exclusive right and authority to direct employees and assign work to said employees as circumstances dictate. Said right shall include but not be limited to the right to

reassign bus drivers and monitors to different bus routes as efficiency and/or the interest of the students dictate.

### **Issues: Hourly Employee (Drivers and Monitors) Leave and Paid Holidays**

The parties have agreed on holidays, vacation, sick and other leave for 12-month full-time employees and leave relating to court appearances and hearings for all bargaining unit employees. They remain apart on paid holidays and other forms of leave and vacation and sick leave for drivers and monitors. Bargaining unit drivers and monitors currently receive five paid days off during the winter break.

#### *Union*

Having withdrawn previous proposals for paid sick leave and paid vacation leave for drivers and monitors, the Union proposes seven days of Paid Time Off (PTO) per year for Drivers and Monitors and that such employees be provided an initial bank of seven such PTO days. The Union has also proposed language relating to paid Holidays, paid Bereavement leave, unpaid Personal leave of absence, Maternity/Childbearing leave, Parental leave, FMLA, Jury Duty, Election Official and Union Official. It is in everyone's interest that employees receive vacation time and paid time off for illness, the Union argued, and regardless of the job they may perform, employees have the same needs as other employees; they have children, they're loved-ones die, they need to take time for emergencies, etc.

The Union also proposed that drivers and monitors who are eligible for health insurance receive seven and one half (7.5) paid holidays per year.

According to the Union, on issues of economics it has offered the IU a "Zero Cost" proposal. In this regard, the Union explained, the IU currently provides health care insurance to everyone in the bargaining unit no matter how many hours they may work per year. The Union has proposed setting health care coverage eligibility at 900 hours per year for single coverage and 1080 hours per year for family coverage. Thus, under the Union's proposal, approximately one third of the bargaining unit will not be eligible for health care. Fairly assuming a monthly per employee cost of health care of \$1,200.00 and that 30 employees will no longer be eligible for the benefit, the IU will save approximately \$422,000.00 per year in health care costs. The Union has proposed seven days of paid PTO and seven and a half paid holidays for unit employees eligible for health care; benefits that would cost the IU approximately \$90,000.00 per year. Assuming that the IU would have to pay substitutes for time taken off by drivers and monitors another \$90,000.00 (a liberal approximation considering there may not be a need for substitutes on holidays) the cost of the benefits would be no greater than \$180,000.00 per year; resulting in a cost savings of approximately \$242,000.00 per year.

#### *IU Position*

In addition to providing paid leave for court hearings for which the IU demands attendance by the employee, the IU takes the position that it is willing to consider some form of paid time off provided that it can find a way of insuring that it can transport students when the drivers take the paid time off. To get some sense of the problem, the IU explained, in order to cover 5 drivers who wish to take off on the same day, the IU will need to have 5 substitute drivers who are familiar enough with the routes/runs, buses etc. to successfully complete them. Indeed, the demands on substitutes will be such that it will require great flexibility and adaptability, as they will need to cover approximately 1300 square miles and about 50 different runs. Even assuming that the IU could find 5 substitutes and the money to pay them, it only has enough substitute work to keep at most two working on a reasonably regular basis. Assuming that all 50 drivers use their 5 days, the IU will only have about 1500 hours to distribute between them. Worse still, the IU argued, the Union is insisting that extra work, overtime, trips and charters be equally or equitably distributed and that the IU maintain as many "full-time" positions as possible and that it reconfigure runs so as to not reduce the length of time of those runs. Where will the IU obtain the regular hours that will be necessary to keep even 2 substitutes employed and available? The point is that providing drivers and monitors paid time off further complicates an operational situation that has already been made impossible by the operational limitations that the Union is proposing.

In regard to other types of leave, the IU is willing to agree to a me-to agreement to apply the same bereavement leave as provided in any agreement it reaches in the ESPA unit for full-time, salaried, 12-month employees, but not to other employees in the bargaining unit as it is not financially feasible to offer such benefits to employees who work less than 1100 hours per year. Similarly, other leaves sought by the Union are typical of those provided for full-time 12-month employees and are excessive considering the limited hours of the employees in this bargaining unit. The IU will comply with the requirements of the FMLA.

### **Recommendations**

In an effort to balance the legitimate interests of the Union in providing unit employees time off and holiday pay while recognizing the challenges facing the IU in arranging coverage for absent drivers and monitors, I recommend: (1) 7.5 paid holidays for drivers and monitors (days to be subject to agreement by the parties) as such will not cause the IU a substitution dilemma; (2) that employees who currently receive such retain the five paid days off during the winter break and (3) Class F and Class S drivers and monitors receive three days of PTO per year.

In regard to other leave, I recommend that; (1) the Agreement language inform employees that the IU will comply with the FMLA, (2) that 12-month full-time employees be given the same bereavement and other leave as provided employees in the ESPA Agreement; (3) that Class F and Class S employees will be entitled to 2 paid days bereavement leave for "death in the family" as defined in the ESPA Agreement and that all Class F, Class S and Class N employees be provided up to three days unpaid bereavement leave; and (4) that in addition to the leave provided for such in the FMLA, Class F, Class S and Class N employees may notify the IU that they are taking extended unpaid leave for purposes of maternity or child rearing, in such case said employee shall not receive benefits during such extended time but will be eligible to bid on positions in the next August bid based upon seniority as calculated at the end of the employee's FMLA eligibility.

### **Issue: Management Rights**

I recommend the IU's language:

It is understood and agreed that the Employer, at its sound discretion, possesses the right, in accordance with applicable laws, to manage all operations in all respects, except as modified by the Agreement. Matters of inherent managerial policy are reserved exclusively to the Employer.

### **Issue: Statutory Savings Clause/General Provisions**

I recommend the IU's language:

Nothing contained herein shall be construed to deny or restrict to any employee such rights as he/she may have under the School Code of 1949 as amended or the Public Employee Relations Act, Act 195, or other applicable laws and regulations

### **Issue: Term of Agreement**

I recommend a term of November 1, 2011 through June 30, 2015.

Because bargaining unit members have already been given salary increases for the 2011-12 fiscal year; and a freeze has been taken by other employees of the IU for the 2012-13 year, I do not recommend retroactivity.

### **Issue: Grievance Procedure**

There are two differences between the Union's proposal and the IU's proposal relating to a Grievance / Arbitration procedure:

- (1) The IU's proposal references "business days" and the Union Proposal references "business days" and "calendar days" and
- (2) In addition to language providing that if the grievant fails to meet procedural requirements the Employer's action on the grievance shall be deemed final, the Union's proposal also provides that if the Employer at any step fails to render its decision within the time periods established, the grievant shall be granted the relief requested, without prejudice to the IU's future position.

### **Recommendations**

Clarity and consistency in describing time periods in a grievance / arbitration procedure is always a good idea and I recommend that the all times referenced in the parties' procedure be consistently defined in terms of working days. Additionally, and notwithstanding that the language proposed by the Union is in the ESPA agreement, I am not persuaded that the Union's language describing the consequence of a failure by the Employer to meet timelines – the granting of the relief sought – is warranted considering the overwhelming practice in labor relations to have the consequence be the right to pursue the grievance at the next step of the procedure. Considering such, I recommend the language in this regard offered by the IU:

If the Employer fails to render its decision within the timelines established, the Union may deem the grievance denied, or wait until a response is received, and the Union may proceed to the next step. Agreements for extensions of time must be documented electronically or in writing.

### **Issue: Dues, Fair Share and COPE deductions**

Similarly, recognizing the overwhelming practice in productive labor relations relationships for Employers to agree upon such deductions, and giving due consideration to the basic fairness underlying such deductions for a democratically selected bargaining representative, I recommend that the Agreement provide for such deductions from the pay of bargaining unit members.

### **Issues: Discipline and Discharge**

The parties have agreed upon language relating to just cause, progressive discipline and probationary employees. They remain apart relating to discipline of employees relating to drug and alcohol testing, motor vehicle / traffic and safety violations, cell phone use. Although I strongly recommend significant penalties for any employee responsible for children who is found to have used, or being under the influence of controlled substances or alcohol, I am not convinced that termination is warranted for each and every violation of traffic and safety laws. For example, I do not believe termination of a bus driver is warranted if his or her bus is stopped and a citation issued for a burned out break light. The consequences of language relating to discipline for controlled substances, drugs, alcohol use, driving violations, etc. is too important to the children involved and the general public for me to offer the parties a recommendation when the issue was not thoroughly explored at hearing. Consequently, I recommend that the parties continue to negotiate over this language.

### **Issues: Hours of Work and Work Year**

The parties have a number of outstanding issues relating to hours of work. I recommend that they continue to bargain on these issues.

### **Issue: Work Schedules for Fulltime, Salaried 12-Month Employees**

I recommend: The Department Director or designee will determine fulltime, salaried 12-month employee work schedules, provided that said work schedules, absent some unusually emergency, shall be a M-F schedule with a fixed shift.

### **Issue: Salary Inequities Committee**

I recommend that the parties establish a joint committee to determine criteria on which to evaluate salary distribution, and identify bargaining unit salaries that significantly deviate from others within a classification/department. If salary inequities are identified, the committee will make recommendations for outliers to the Executive Director. Thereafter the Executive Director may, in the exercise of his or her exclusive discretion, make recommended adjustments.

### **Issue: Probationary Period**

The IU and the Union agreed on the probationary period but differ on what, if any, benefits such employees receive during their probationary period.

In regard to eligibility of probationary employees to benefits, I recommend that such eligibility be determined by the controlling language of the Agreement provisions providing such benefits or controlling language or in the absence of Agreement language the language of the benefit plan itself.

### **Issue: Group Term Life Insurance**

I recommend that all bargaining unit members, including 12-month salaried and Drivers and Monitors receive the same Life Insurance that other IU employees receive.

### **Issue: Insurance Coverage/Retirees**

I recommend the same Insurance Coverage benefit be provided for fulltime salaried, 12-month employee retirees as that provided to the ESPA unit, with the same co-pays and deductibles.

### **Issue: Errors In Pay**

I recommend language providing that if an employee who believes he/she has not been paid correctly should report the error as soon as possible. If the error is confirmed, the required amount will be added to or deducted from the next paycheck. If a overpayment is to be paid back, that no greater than 10% of the employees net may be taken in any single pay week.

### **Issue: Maintenance and Safety Of Buses**

I recommend the Union's proposed language:

- A. Drivers of buses shall be required at all times to keep the windows and interior of their buses clean except where the bus is used on a trip by another driver. Trip and substitute drivers are required to clean their assigned buses for that day. The IU will supply all equipment and cleaning supplies needed to meet the task, examples: (brooms, paper towels and Windex, ext.).
- B. Safe Vehicles - No driver shall be disciplined for refusing to drive an unsafe vehicle. If the company's position is that the vehicle is safe, the dispute as to whether the vehicle is unsafe shall be referred to the State Police for final determination and the driver shall drive a spare vehicle during the interim period. Under no circumstance will a driver be required to drive a vehicle without the maintenance departments signed and written determination that the vehicle is safe.

Any employee involved in an accident will immediately report to the IU and fill out necessary paperwork that is required by the IU (example: names, insurance info.) such reports will be made out on company time.

### **Issue: Work By Supervisory Employees**

I recommend the following language:

Supervisor and management employees shall not do bargaining unit work absent a bona fide emergency.

**Issue: Personnel File**

I recommend the following language:

Employees shall be entitled upon reasonable request to review the contents of his/her personnel file and receive copies of any materials contained in the file. The Employee may take a union representative with them to review the file.

**Issue: Use of Bulletin Board**

I recommend the following language:

The Employer will provide a reasonable number of suitable bulletin boards and at a minimum one at every depot used by the IU, on which the Union may post from time to time such notices it may desire to bring to the attention of employees. The parties agree that they will not post any notices of scurrilous or inflammatory nature on any bulletin board.

**Issue: Wages**

Minimum starting hourly wages for positions in the bargaining unit are set forth in Appendix A. In regard to annual increases, the ESPA bargaining unit is more similar to this unit than the Teacher unit. Consequently, I recommend that bargaining unit employees here receive the same percent increase in hourly rate/salary received by the ESPA bargaining unit for each year for the duration of the Agreement.

**Other Matters**

Besides matters already subject to agreement by the parties, I recommend that as to all other proposed subjects of Agreement not the subject of recommendations herein, that the applicable existing policy of the District be incorporated into the Agreement.

***Please note  
that the cover letter to this Report and Recommendation summarizes the  
responsibilities of the parties to notify the PLRB of their acceptance or rejections of this  
Recommendation and should be given careful attention.***



Dated: October 28, 2013

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Timothy J Brown, Esquire  
P.O. Box 332  
Narberth, PA 19072

**ACT 88-13-45-E FACT FINDING REPORT APPENDIX A**

**Starting Hourly Wages**

**Hourly Rates/ Classifications**

Class F and Class S Drivers	\$14.50
Full Time Courier	\$14.50
Class F and Class S Monitors	\$12.76
Full Time Custodian	\$12.17
Full Time Mechanic	\$16.00
Full Time Food Service Coordinator	\$12.17
Class N Drivers	\$14.00
Class N Monitors	\$12.26
Part time Custodian	\$9.90
Summer Work Force Laborers	\$9.47

There shall be no lowering of wages due the wage rates listed on Appendix "A"